in which he restates the principles of the earlier article. The courts, with one notable exception, paid no attention to Mr. Ewart's work and continued to use the word "waiver" which Mr. Ewart had pointed out in his articles as not only useless, but misleading and promoting injustice. In one court, however, namely, the Supreme Court of Indiana in the case of Modern Woodmen v. Vincent, 40 Ind. App. 741, 80 N. E. 427 (1907), note was made of his article and of his conclusions. In 1914 Mr. R. D. Bowers, of the New Mexico Bar, published a book on the "Law of Waiver." If he had been familiar with Mr. Ewart's work, much of his book, valuable though it is, would either not have been written or would have been entirely different in reasoning and conclusion. Mr. Bowers has just published a book on the "Law of Conversion" in which he has a chapter entitled "Waiver of Conversion," virtually a branch of the law of Election of Remedies. The same old fallacies are here re-stated, although it is admitted in Section 562 "it has been thought that the expression 'waiving the tort and suing on the contract' is misleading." It is submitted that Mr. Ewart's work demonstrates beyond doubt that the use of the phrase "waiver" is not only misleading but harmful.

One word more. At the end of his article "Waiver of Election" in 29 Harvard Law Review, 724-730, Mr. Ewart states: "I have prepared for the press a dissertation with the title 'Waiver distributed into Election, Estoppel, Contract and Release,' but four publishing firms have declined it. It is said to be 'highly meritorious' and so on, but it is only 350 pages, and a small book is as bothersome as one yielding larger returns. The encyclopedias and the stenographers are rapidly depriving lawyers of any claim to be members of the learned professions."

Fortunately Mr. Ewart was able to find two University Presses willing to publish his book for the greater glory of the Law and benefit of the Bar.

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UNFAIR COMPETITION. By William H. S. Stevens, Ph.D. Pp. 265. Chicago: University of Chicago Press, 1917.

Perhaps few federal legislative enactments in recent years will prove of such far-reaching effect as section five of the Federal Trade Commission Act, which declares unlawful "unfair methods of competition in commerce" and empowers and directs the commission to prevent the employment of such methods. It would be difficult to imagine a phrase of more general potential application, or one permitting a wider discretion in its definition and construction, than the term "unfair competition."

It was clearly the purpose of Congress not to restrict the judgment of the Federal Trade Commission and to allow a wide range of discretion in the administration of this provision. The question with which the commission is confronted under this section of the act is one that in its essence is economic rather than legal.

The common law has heretofore concerned itself with certain restraints

upon trade and considered their reasonableness, and has taken cognizance of certain cases where fraud or deceit were involved. But in most of that broad class of situations which the term "unfair competition" comprehends, the common law either provided a dubious and ineffective remedy or denied all redress. The act opens an entirely new and unexplored field of law, wherein the principles of trade which are economically sound are to be administered and enforced by a federal commission; a function not unlike that of the Interstate Commerce Commission in determining what is or is not an "unjust discrimination" or a "reasonable" rate under the Interstate Commerce Act; a duty which comprehends, in substance, wide legislative powers, though technically all the rulings may be administrative.

Starting with the premise that competition is economically desirable and that practices designed solely to eliminate competition are *prima facie* unfair, a maze of situations and complex conditions immediately suggest themselves under which the application of the test "unfair competition" promises to prove bewilderingly difficult. At the same time this test, wisely administered, should produce pronounced beneficial results.

In view of the breadth of the unexplored field which this section contemplates, the advent of a treatise on the subject at this time is particularly opportune. The book is an expansion and an elaboration of two articles by its author which appeared in the *Political Science Quarterly* in June and September, 1914.

Numerous competitive methods in vogue at the present which are of dubious legality under this section are successively considered, attention being given to their nature, their purpose, their effect, their economic soundness and, finally, to their probable legal status under the recent Trade Commission Act. Where such questions have been the subject of judicial determination in other countries, such as Australia or New Zealand, under similar statutes, these decisions are noted.

A general idea of the broad scope of the twelve chapters dealing with various questionable methods of competition may be gleaned from their enumeration: Local Price-Cutting, Operation of Bogus "Independent" Concerns, Fighting Instruments, Conditional Requirements ("Tying Clauses"), Exclusive Arrangements, Black Lists, Boycotts, White Lists, Rebates and Preferential Arrangements, Engrossing Machinery or Goods Used in the Manufacturing Process, Espionage, Coercion, Threats, Intimidation, Interference, and Manipulation.

There is little discussion of hypothetical conditions, the practices considered in nearly every case being those employed by well-known corporations, the narration of incidents actually occurring in trade adding greatly to the interest and practical value of the work. It represents, apparently, the fruit of considerable investigation. The narration of specific examples of competitive methods that have been employed will prove of absorbing interest both to the layman and to the lawyer. Chapter IV, dealing with "tying" clauses, is particularly interesting.

The author's style is clear and easily readable, and the material is made accessible by a rather complete index. The work makes no pretense of being a legal treatise, concerning itself merely with the economics of unfair com-

petition. With many of the author's conclusions upon the propriety of certain methods and practices of competition and their status under this recent legislation, a great number of his readers will doubtlessly disagree. But however this may be, the work, by suggesting the various situations which possibly come within the purview of section five of the act, fulfills a present need and performs an important service; and the author's discussions of these practices have an immediate practical interest.

Benjamin M. Kline.

THE PUBLIC DEFENDER. By Mayer C. Goldman. Pp. XI, 96. New York: G. P. Putnam's Sons, 1917.

At this time when the foundations of liberty and justice in democracy are being re-examined, this little volume is especially timely. It is the immediate outgrowth of that specific interest in the criminal, popularized on the one hand by the new science of criminality, and on the other by the popular demand for the humanizing of criminal treatment. Dissatisfaction with our criminal procedure is not found alone among students of social institutions, but among the leaders in the legal profession as well. Among the remedies proposed, one of the most important is that of the "Public Defender," and the author has rendered a public service by his clear and forceful presentation of the subject.

Justice Wesley O. Howard, Appellate Division of the Supreme Court of New York, in a foreword, indicts the present system as unjust to the poor in language which a layman would hardly venture to use.

The function of the Public Defender is primarily to represent indigent accused, who merely because of their poverty are at the double disadvantage of having to go to jail and having to appear in court without competent counsel. The idea is based, according to the writer, upon two important principles that (1) it is as much the function of the state to shield the innocent as to convict the guilty, and (2) the "presumption of innocence" ("the pleasant fiction" as Train calls it) requires the state to defend as well as prosecute accused persons. Our makeshift method of satisfying the constitutional right of the accused to counsel by the "assigned counsel system" is obviously inadequate and unjust because of the type of lawyer who can afford to serve such clients. State compensation for such service would make it possible to appoint competent counsel, but would be more expensive than the method of the Public Defender and at the same time would lack in dignity.

The claim of district attorneys that they exercise the functions of public defender reflects much credit upon them, revealing a desire to be judicial rather than partisan. Nevertheless, the system of procedure renders this practically impossible. The number of petitions for new trials granted by appellate tribunals on the ground of over-zealous activities of prosecutors testifies to the inadequacy of the present method. In Chapter III on Public Prosecution and Prosecutors, the author quotes numerous judges in their condemnation of abuses growing out of the over-exertions of prosecutors in securing convictions that are a reproach to the administration of justice.

The following benefits accruing to the system of procedure through the